

Message Text

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ORIGIN DLOS-09

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TO ALL DIPLOMATIC POSTS

C O N F I D E N T I A L STATE 070638

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: USG LAW OF THE SEA POSITIONS AS NEGOTIATIONS
RECOMMENCE

REF: A. 77 STATE 294137 B. 77 STATE 304813 C. STATE
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1. SEVENTH SESSION OF THIRD UN LAW OF THE SEA CONFERENCE
BEGINS MARCH 28. THIS MESSAGE, IN ADDITION TO AMBASSADOR
RICHARDSON'S JANUARY 18 SPEECH AT SEAPOWER SYMPOSIUM OF
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CINCINNATI COUNCIL OF THE NAVY LEAGUE OF THE US (TRANS-
MITTED BY WIRELESS FILE) AND HIS MARCH 16, 1978 PRESS STATE-
MENT (SEPTEL), IS INTENDED TO PROVIDE POSTS WITH UP-TO-DATE
PICTURE OF US CONCEPTION OF MAJOR OUTSTANDING LOS SUBSTAN-
TIVE AND PROCEDURAL ISSUES. POSTS ARE ALSO REFERRED TO
REFTELS REPORTING ON IMPORTANT INTERSESSIONAL ACTIVITIES
DURING PAST SEVERAL MONTHS. DURING COURSE OF NEGOTIATIONS
US DEL IN GENEVA WILL APPRECIATE ANY INFORMATION POSTS BE-
LIEVE MIGHT BE USEFUL, WITH INFO COPIES TO DEPARTMENT. US
DEL WILL KEEP POSTS INFORMED OF DEVELOPMENTS IN GENEVA.

COPIES OF THE INFORMAL COMPOSITE NEGOTIATING TEXT (ICNT) ISSUED AFTER THE SIXTH SESSION LAST JULY WERE FORWARDED TO POSTS UNDER COVER OF STATE A-849, OF FEBRUARY 27.

2. PROCEDURAL PROBLEMS POTENTIALLY IMPEDE THE ACHIEVEMENT OF MAJOR PROGRESS AT THE SEVENTH SESSION. FOREMOST IS THE ISSUE OF CONTINUATION OF SRI LANKA'S HAMILTON SHIRLEY AMERASINGHE AS LOS CONFERENCE PRESIDENT. AMERASINGHE HAS PERFORMED WELL AND HAS BEEN A HELPFUL INFLUENCE IN MODERATING SOME OF THE MORE RADICAL DEVELOPING COUNTRIES. UNFORTUNATELY, HE WILL MOST LIKELY BE DROPPED FROM SRI LANKA'S LOS DELEGATION BECAUSE OF THE RECENT CHANGE OF GOVERNMENT THERE. HE THEREFORE MAY BE UNABLE TO CONTINUE AS LOS CONFERENCE PRESIDENT IF THE LATIN AMERICANS, WHO MISTRUST AMERASINGHE, CONTINUE TO OPPOSE THE PRECEDENT OF AN INDEPENDENT PRESIDENT. CLEAR ALTERNATIVES TO AMERASINGHE'S PRESIDENCY HAVE NOT EMERGED. THERE IS ONLY A SLIM POSSIBILITY THAT THE GOVERNMENT OF SRI LANKA WILL AT THE ELEVENTH HOUR ALLOW AMERASINGHE TO BE ATTACHED TO ITS LOS DELEGATION.

3. A SECOND UNRESOLVED PROCEDURAL ISSUE IS THE ROLE OF THE PRESIDENT AND THE COMMITTEE CHAIRMEN. AT THE LOS INTERCONFIDENTIAL

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SESSIONAL MEETING IN NEW YORK LAST FEBRUARY, AMERASINGHE PROPOSED PROCEDURES FOR THE SEVENTH SESSION THAT ENVISAGE PRINCIPAL NEGOTIATING ROLE FOR THE PRESIDENT IN PLENARY, PARTICIPATION OF THE COMMITTEE CHAIRMEN IN AN ADVISORY CAPACITY, AND NEGOTIATING GROUPS APPOINTED BY AND REPORTING TO THE PRESIDENT. THE COASTAL STATES SUPPORTED A VETO FOR COMMITTEE CHAIRMEN, HOWEVER, AND NO SETTLEMENT WAS REACHED. THE US, AFRICANS AND ASIANS INDICATED OPPOSITION TO THE VETO, WHICH WAS USED IN ESSENCE TO PRODUCE THE UNACCEPTABLE SEABEDS TEXT AT THE SIXTH SESSION. WE WILL ATTEMPT TO BREAK THE PROCEDURAL IMPASSE DURING INFORMAL DISCUSSIONS IN GENEVA NEXT WEEK. WE LOOK TO MODERATES AMONG THE G-77 FOR ASSISTANCE.

4. THE PRINCIPAL OUTSTANDING SUBSTANTIVE ISSUES ARE: (A) DEFINITION OF AN ACCEPTABLE AND BALANCED INTERNATIONAL DEEP SEABED MINING REGIME; (B) ACCESS OF THE LAND-LOCKED GEOGRAPHICALLY DISADVANTAGED STATES (LL/GDS) TO THE LIVING RESOURCES OF THE EXCLUSIVE ECONOMIC ZONE (EEZ) OF OTHER STATES; (C) DEFINITION OF THE CONTINENTAL MARGIN BEYOND 200 MILES AND THE RELATED ISSUE OF REVENUE SHARING; (D) DELIMITATION OF THE LIMITS OF MARITIME ZONES AS BETWEEN ADJACENT AND OPPOSITE STATES; (E) DISPUTE SETTLEMENT; AND (F) PREAMBLE AND FINAL CLAUSES.

5. DEEP SEABEDS: CREATION OF AN ACCEPTABLE INTERNATIONAL REGIME FOR THE EXPLORATION AND EXPLOITATION OF DEEP SEABED

MINERAL RESOURCES HAS BEEN THE MOST DIVISIVE ISSUE AND REMAINS THE GREATEST IMPEDIMENT TO REACHING A COMPREHENSIVE TREATY TEXT. AT THE CLOSE OF THE SIXTH SESSION, COMMITTEE

I CHAIRMAN PAUL ENGO OF CAMEROON ISSUED A TEXT THAT DEVIATED SHARPLY FROM THE MORE MODERATE, COMPROMISE LANGUAGE THAT MINISTER JENS EVENSEN OF NORWAY HAD CAREFULLY NEGOTIATED EARLY IN THE SESSION. ENGO'S UNILATERAL ACT AND THE RESULTING TEXT PROMPTED AMBASSADOR RICHARDSON'S STATE-CONFIDENTIAL

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MENT RECOMMENDING A THOROUGH REVIEW OF US INTERESTS IN LOS. WE BELIEVE THAT THIS AND SUBSEQUENT INDICATIONS OF OUR RESOLVE NOT TO BUY A TREATY AT THE PRICE OF ASSURED ACCESS TO SEABED RESOURCES FOR US FIRMS HAVE HAD A BENEFICIAL EFFECT. A GOOD CROSS-SECTION OF THE CONFERENCE HAS RECOGNIZED THE NEED FOR SUBSTANTIAL REVISION OF THE SEABEDS TEXT, AND A WORKING GROUP CHAIRED BY FRANK NJENGA (KENYA) TOOK SMALL STEPS IN NEW YORK TOWARDS SORTING OUT SOME DIFFICULT PROVISIONS GOVERNING ACTIVITIES IN THE DEEP SEABED AREA. THE PROCESS WORKED AND WILL HOPEFULLY CONTINUE IN GENEVA.

6. ACCESS OF LL/GDS TO THE LIVING RESOURCES OF THE EEZ: THE LL/GDS ARE IN THE UNENVIABLE POSITION OF BEING BIG LOSERS WITH A TREATY, BUT EVEN BIGGER LOSERS WITHOUT ONE. COASTAL STATE JURISDICTION OVER FISHING OUT TO 200 MILES IS MORE OR LESS A GIVEN, WITH OR WITHOUT A TREATY. TO THE EXTENT THAT THE LL/GDS CAN GAIN ANY RECOGNITION OF A RIGHT TO FISH IN THE EEZ OF OTHER STATES, THE RIGHT WILL BE A VERY CIRCUMSCRIBED ONE. WE EXPECT A COMPROMISE WILL EMERGE, BUT ONLY AFTER AT LEAST SOME PROGRESS IS MADE ON DEEP SEABEDS. (THE LL/GDS DO NOT WANT THEIR PLIGHT ALONE TO STAND IN THE WAY OF A TREATY.) THE OUTLINES OF A FINAL RESOLUTION ARE UNDERSTOOD BY MANY COUNTRIES TO: (A) PERMIT THE LL/GDS A RIGHT OF ACCESS TO A PART OF THE SURPLUS OF THE LIVING RESOURCES IN THE EEZ OF OTHER STATES; (B) NON-RECOGNITION OF ANY GENERAL PREFERENCE FOR LL/GDS OVER TRADITIONAL FISHING NATIONS; AND (C) DEFINITION OF THIS RIGHT WITHIN A REGIONAL AND SUBREGIONAL CONTEXT.

7. CONTINENTAL MARGIN AND REVENUE SHARING: STATES WITH BROAD MARGINS (AN IMPORTANT MINORITY) CONTINUE TO MAINTAIN THAT THEY NOW HAVE RESOURCE RIGHTS EXTENDING TO THE EDGE
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OF THE MARGIN. STATES LESS WELL ENDOWED WANT TO CUT OFF COASTAL STATE JURISDICTION AT 200 MILES. THERE IS BROAD RECOGNITION THAT A COMPROMISE WILL BE STRUCK BASED UPON A PRECISE OUTER LIMIT OF COASTAL STATE JURISDICTION ON

THE SHELF, COUPLED WITH REVENUE SHARING BEYOND 200 MILES. IF SO, OUR INTEREST IN OIL OFF OUR COASTS WILL BE PROTECTED.(OUR VIEW IS THAT THIS INTEREST IS PROTECTED WITHOUT A TREATY, BUT WITH A LESSER DEGREE OF PREDICTABILITY.)

8. MARITIME ZONES BETWEEN OPPOSITE AND ADJACENT STATES: THIS VERY DIVISIVE ISSUE HINGES ON THE QUESTION OF

THE PRINCIPLE TO BE APPLIED AS THE PRIMARY METHOD OF DELIMITATION. SINCE THIS IS BASICALLY A BILATERAL MATTER, THE CONFERENCE CAN ONLY ESTABLISH A GENERAL FRAMEWORK WITHIN WHICH BILATERAL AGREEMENTS ON SUCH DELIMITATION MIGHT BE REACHED.

9. DISPUTE SETTLEMENT: INFORMAL DISCUSSIONS ON COMPULSORY DISPUTE SETTLEMENT WERE HELD DURING THE 1977 SESSION. THESE RESULTED IN AGREEMENT THAT AN LOS TRIBUNAL SHOULD BE ESTABLISHED WITH A SEPARATE SEABED DISPUTES CHAMBER. THE LATTER WOULD ENJOY EXCLUSIVE JURISDICTION OVER ALL SEABED MINING DISPUTES. EXCEPTIONS TO COMPULSORY JURISDICTION OF THE TRIBUNAL IN AREAS FALLING UNDER NATIONAL JURISDICTION, PARTICULARLY SCIENTIFIC RESEARCH AND LIVING RESOURCE DISPUTES IN THE EEZ, RECEIVED CONSIDERABLE ATTENTION AND CONTINUE TO PRESENT DIFFICULTIES. ANOTHER MAJOR REMAINING PROBLEM IS THE LIMITED JURISDICTION OF THE CHAMBER WITH RESPECT TO DISPUTED ACTS TAKEN BY THE INTERNATIONAL SEABED AUTHORITY OR ITS ORGANS. WHILE THE TEXT IS GENERALLY SATISFACTORY TO MANY NATIONS AND ENJOYS A BROAD MEASURE OF SUPPORT, IT CLEARLY NEEDS TIGHTENING.

10. PREAMBLE AND FINAL CLAUSES: ALTHOUGH THIS SET OF ISSUES HAS NOT YET BEEN DISCUSSED AT THE CONFERENCE, THE CONFIDENTIAL

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KEY QUESTIONS INCLUDE: ADHERENCE BY ENTITIES OTHER THAN STATES (E.G., THE PLO AND THE EEC), RESERVATIONS, ENTRY INTO FORCE, PROVISIONAL APPLICATION, AND AMENDMENT.

11. IT IS UNCLEAR AT THIS POINT TO WHAT EXTENT WE WILL BE ABLE TO MAKE PROGRESS ON THESE MAJOR OUTSTANDING ISSUES. ONE HOPEFUL NOTE THAT MAY HELP OVERCOME PROCEDURAL DIFFICULTIES AND SPUR SUCCESSFUL NEGOTIATIONS IS THE GENERAL HOPE AMONG DELEGATIONS THAT THE SEVENTH SESSION MUST BE THE FINAL MAJOR NEGOTIATING SESSION OF THE CONFERENCE. IN CASE REAL PROGRESS IS ACHIEVED, DELEGATIONS MAY WANT TO KEEP OPEN THE OPTION OF A SUBSEQUENT MEETING LATER IN 1978.

12. DEEP SEABED MINING LEGISLATION IS STILL UNDER CONSIDERATION IN CONGRESS, WITH THE HOUSE VERSION SOMEWHAT FURTHER ALONG. FYI: WITH RESPECT TO THE HOUSE BILL, NEGOTIATIONS ARE STILL IN TRAIN AMONG THE ADMINISTRATION,

CONCERNED HOUSE COMMITTEES AND THE INDUSTRY ON INCLUSION
OF AN APPROPRIATE PROVISION FOR REVENUE SHARING. WHEN
THIS IS SETTLED, THE BILL WOULD GO TO WAYS AND MEANS AND
THENCE TO THE FLOOR, PROBABLY IN APRIL. END FYI. WE
DO NOT EXPECT A FINAL BILL TO BE PRESENTED TO THE PRESI-
DENT UNTIL AFTER THE SEVENTH SESSION CLOSSES. VANCE

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